**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
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| 1993 Annual Access Tariffs | ) | CC Docket No. 93-193 |
| 1994 Annual Access Tariffs | ) | CC Docket No. 94-65 |

**REFUND PLAN OF SBC COMMUNICATIONS INC.**

SBC Communications, Inc., ("SBC") on behalf of The Ameritech Operating Companies ("Ameritech"), Nevada Bell Telephone Company ("Nevada Bell") and Pacific Bell Telephone Company ("Pacific Bell")(collectively "SBC LECs"), in accordance with the Commission's July 30, 2004 *Order*[1] in the above-captioned docket, hereby submits the following information: (1) recalculation of its 1992 and 1993 earnings and rates of return, (2) recalculation of its sharing obligations for the1993 and 1994 tariff years, (3) calculation of additional 1993 and 1994 access rate decreases and (4) a plan for refund.

## I. SUMMARY OF RECALCULATIONS AND REFUND PLAN

**Recalculations**: SBC recalculated its 1992 and 1993 earnings and rates of return using data previously submitted by the SBC LECs in their 1992-1994 interstate access tariff filings.

*Ameritech:* Based on Ameritech's recalculated 1992 and 1993 earnings and rates of return, Ameritech had an additional sharing obligation of approximately $5 million in 1993 and $9.4 million in 1994. Factoring in the available headroom, Ameritech would have only been required to reduce its access rates another $2.4 million in 1993 and $4.4 million in 1994 to account for the additional sharing obligations. With interest, Ameritech owes a refund of approximately $4.2 million for 1992 and $7.2 million for 1993.

[1] *1993 Annual Access Tariff Filings et. al*, CC Docket Nos.94-193 and 94-65, Order (rel. July 30, 2004).

*Nevada Bell:* Nevada Bell's 1992 and 1993 revised earnings and rates of return produce an additional sharing obligation of $83 thousand in 1992 and $1.4 million in 1993. Nevada Bell did not have headroom in 1992, but did in 1993. Applying the available headroom, Nevada Bell would have only had to reduce its access rates by another $957,000 in 1994 to reflect the additional sharing obligation. With interest, Nevada Bell owes a refund of approximately $146,000 for 1992 and $1.6 million for 1993.

*Pacific Bell:* Pacific Bell's 1991 earnings did not exceed 12.25%, thus there was no sharing obligation to addback in calculating 1992 earnings. For 1993, Pacific Bell's revised earnings and rate of return produces an additional sharing obligation of $1 million in 1994. Factoring in available headroom, Pacific Bell would have only had to reduce its overall access rates another $732,000 to account for the additional sharing obligation. With interest, Pacific Bell owes a refund of approximately $1.2 million.

**Refund Plan:** SBC will issue all refunds to IXCs. SBC no longer has carrier customer billing records for 1993 and 1994, and therefore, will use several proxies to identify IXC customers and determine their refund amounts. Specifically, SBC will identify these customers and determine their individual refund amounts via the following methods:

(1) Method One: SBC will allow carriers to submit their 1993 and/or 1994 SBC billed interstate originating and terminating CCL minutes within 30 days of approval of SBC's Refund Plan. SBC will divide each carrier's submitted interstate CCL minutes by the total number of interstate CCL minutes billed by the relevant SBC LEC in 1993 and/or 1994 to determine market share. SBC will then apply the resulting percentage to the relevant LEC's total refund liability to determine the individual refund amount.

(2) Method Two: This method will commence after all refunds have been calculated under Method One. For those carriers that do not submit evidence to SBC pursuant to Method One, SBC will use IXC presubscribed telephone line data

published by the FCC for 1993 and 1994 to identify these IXC customers and determine their individual IXC interstate market share. SBC will then apply each IXC's market share percentage to the relevant LEC's remaining refund liability to arrive at that carrier's refund amount.

SBC will issue all refunds through credits on bills (existing customers) or through refund checks (former customers) within 90 days of approval of its refund plan.

## II. CALCULATIONS OF EARNINGS, RATES OF RETURN, SHARING OBLIGATIONS, AND ACCESS RATE DECREASES.

In its *Order*, the Commission required all price cap LECs that were subject to a sharing obligation, but did not apply addback to their 1993 and/or 1994 tariff filings to: (1) recalculate their 1992 and 1993 earnings and rates of return, (2) recalculate their sharing obligations for 1993 and/or 1994 and (3) compute the amount of any resulting access rate decreases. Ameritech, Nevada Bell and Pacific Bell had sharing obligations for the tariff years 1993 and/or 1994, but did not addback, and thus provide the foregoing information, including interest calculations, below.

### A. RECALCULATION OF EARNINGS, RATES OF RETURN AND SHARING OBLIGATIONS

Attached as Exhibits 1-3 to this filing are SBC's recalculations of its 1992 and 1993 earnings, rates of return, and sharing obligations. For each year, the first column provides SBC's 1992 or 1993 filed revenues, rates of return and sharing obligations, which did not incorporate the addback adjustment. The second column provides the 1992 or 1993 adjusted revenues, which reflect the addback of the prior year's sharing obligations. This column also reflects the change in income tax expense as a result of the adjusted revenue and then recalculates the rate of return and resulting sharing obligation. The last column provides a summary of the difference between Columns 1 and 2.

Exhibits 8-10 provide the SBC LECs adjusted 1993 and 1994 Price Cap Indices, based on addback.

### B. RECALCULATION OF ACCESS RATE DECREASES

Based on SBC's recalculated sharing obligations, SBC would have further reduced its access rates in 1993 for Ameritech and Nevada Bell and in 1994 for Ameritech, Nevada Bell, and Pacific Bell. To determine the additional access rate decreases, SBC first obtained the amount of headroom that existed in 1993 and 1994 for each entity by basket from its 1993 and 1994 tariff filings.[2] SBC then subtracted the headroom amounts from its additional sharing obligations, by basket, to determine the additional access rate reductions. Exhibits 4-7 detail, by basket, the headroom figures, additional sharing obligations, and resulting access decreases for each SBC LEC.

### C. CALCULATION OF INTEREST

SBC applied the IRS interest rate for corporate overpayments exceeding $10,000,[3] which is compounded daily, to the access rate reductions detailed in Exhibit 7 to calculate the total refund amount for each basket. The overpayment rate, rather than the underpayment rate, is appropriate here. As the FCC has previously held, carriers should not be required to use the higher punitive IRS underpayment rate to calculate interest, where they filed their tariffs in good faith and are simply refunding money in excess of the rates allowed by the Commission.[4] In such instances, the Commission has reasoned that the customer's overpayment to the carrier is akin to the customer overpaying the IRS.[5] Here, SBC filed its 1993 and 1994 tariffs in good

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[2] *See* Exhibits 4-6. *See also* Ameritech Transmittal 735, FCC No. 2, Exhibit 1; Nevada Bell Transmittal 168, FCC No.1, Exhibit 1; and Pacific Bell Transmittal 1701, FCC No.28, Exhibit 1.

[3] 26 U.S.C. § 6621.

[4] *Long-Term Telephone Number Portability Tariff Filings of Ameritech Operating Companies, Pacific Bell, Southwestern Bell Telephone Companies and US West Communications, Inc.* CC Docket No. 99-55, 14 FCC Rcd 17339, ¶¶ 4-5 (1999).

[5] *Id.*

faith based on the Commission's price cap rules. Given that the Commission's pre-1995 rules did not clearly require carriers to addback, SBC should not be penalized with a requirement to use the higher underpayment tax rate to calculate interest.

## III. Refund Plan

In total, SBC owes customers a refund of $14.3 million.[6] By carrier, Ameritech owes approximately 11.4 million, Nevada Bell owes approximately $1.7 million and Pacific Bell owes approximately $1.2 million. Exhibit 7 provides a breakdown of the refund amounts per basket. SBC will only issue refunds to IXCs, [7] as the overwhelming majority of the access rate decreases in 1993 and 1994 impacted carrier, not end user rates.[8]

SBC has expended great effort to locate its 1993 and 1994 customer billing data, including searching through archived files and contacting retired or former employees, but has been unable to locate these records. Accordingly, SBC will use proxies to identify customers and determine their appropriate refund amounts.

*Method One.* SBC will permit carriers to submit documentation of their SBC billed interstate originating and terminating CCL minutes for 1993 and/or 1994 to SBC within 30 days of Commission approval of SBC's refund plan. At the conclusion of this filing period, SBC will calculate each submitting carrier's refund in the following manner: [9] (1) SBC will apply that carrier's total SBC billed interstate CCL minutes for 1993 and/or 1994 against the total number

[6] *See* Exhibits 1-3, and 7.

[7] While Exhibit 7 shows that each SBC LEC owes a refund to common line customers, which at the time included end users and IXCs, under the Commission's 1993 and 1994 price cap rules, access rate decreases would have required a reduction in carrier common line rates, not end user common line rates.

[8] Nevada Bell has a refund liability of approximately $4000.00 for the interexchange basket for 1993. Interstate Intralata toll revenues are in this basket. Given the *de minimus* size of this refund and the impracticality of identifying specific toll end users, SBC believes it is appropriate to refund the $4000.00 to IXCs.

[9] In the event any SBC LEC is able to locate its 1993 or 1994 carrier customer billing records or any 1993 or 1994 reports generated from its billing system that provide total billed interstate CCL minutes for any IXC entitled to a refund, SBC will use that data to calculate that IXC's market share.

of interstate CCL minutes billed by the relevant SBC LEC during that time period to compute that carrier's share on interstate CCL minutes;[10] and (2) SBC will apply that carrier's resulting share of interstate access minutes to the relevant SBC LEC refund liability to determine the refund amount.[11] SBC will issue refunds via a credit on their bill (existing customers) or forward a refund check (former customers) within 90 days of approval of SBC's refund plan.

*Method Two*. SBC will use 1993 and 1994 presubscribed telephone line data, published by the FCC,[12] to identify the remaining IXC customers and calculate their interstate market share and individual refunds for 1993 and 1994. This process will begin after all refund calculations have been completed under Method One.

Method Two consists of three steps. First, for each year, SBC will remove all presubscribed telephone lines of carriers that will be issued refunds under Method One from the total number of presubscribed lines reported in the *FCC Long Distance Market Share Report* (hereinafter referred to as the "Adjusted Reported Lines"). Second, SBC will calculate the market share of each carrier listed in the *FCC Long Distance Market Share Report*[13] by dividing the carrier's presubscribed telephone lines set forth in that report by the Adjusted Reported Lines to determine the carrier's market share. Third, SBC will apply the carrier's market share of

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[10] SBC reported its 1993 and 1994 interstate CCL minutes in its 1994 and 1995 annual tariff filings. *See* Ameritech Transmittal 791, FCC No.2 (1994); Ameritech Transmittal 882, FCC No.2 (1995); Nevada Bell Transmittal 199, FCC No.1 (1994); Nevada Bell Transmittal 208, FCC No.1 (1995); Pacific Bell Transmittal 1701, FCC No.28 (1994); and Pacific Bell Transmittal 128, FCC No.128 (1995).

[11] As an example, Carrier X submits 1994 data showing that it had 50,000,000 Nevada billed interstate CCL minutes in 1994. SBC would divide that number by the total number of Nevada billed interstate CCL minutes in 1994, which was 1,022,987,000, to derive a percentage of minutes. Based on that calculation, Carrier X had approximately 4.9 % of Nevada Bell's interstate CCL minutes in 1994 and thus would receive a SBC refund equaling 4.9 % of Nevada Bell's total refund liability.

[12] FCC Staff Report, "Long Distance Market Shares Fourth Quarter," Table 2.1 (Mar. 31, 1999) at 5 ("*FCC Long Distance Market Share Report*").

[13] SBC will not issue any refunds to any carrier listed in the *FCC Long Distance Market Share Report* that will be awarded refunds under Method One or did not operate in the Ameritech, Nevada Bell or Pacific Bell operating territories.

presubscribed lines to each SBC LEC's total remaining refund amount to determine the carrier's individual refund.[14]

Additionally, SBC will permit IXC customers that were not identified in the *FCC Long Distance Market Share Report* to submit a claim to SBC, within 30 days of approval of this refund plan, providing one of the following: (1) documentation of their presubscribed telephone lines for 1993 and 1994 or (2) documentation demonstrating that they operated as an IXC in the Ameritech, Pacific Bell or Nevada Bell operating territories in 1993 or 1994. For the former group, SBC will use the methodology described in the preceding paragraph to calculate the individual refund. For the latter group, SBC will use the number of presubscribed telephone lines for non-qualifying carriers set forth in the *FCC Long Distance Market Share Report* to determine the refund amounts for these carriers.[15] SBC will issue these carriers refunds as credits to their bill (existing customers) or through a check (former customers) within 90 days of approval of SBC's refund plan.

*Bankruptcies:* A limited number of carrier customers eligible for a refund, using the previously described methodologies, have filed for Chapter 11 Bankruptcy. Some of these customers owe money to Ameritech, Nevada Bell or Pacific Bell for interstate services. SBC will evaluate all companies that have filed for bankruptcy on a case-by-case basis to determine

[14] For example, assume that after all refunds have been calculated under Method One, there is a total remaining refund amount of $500,000 for Nevada Bell for 1994. Assume Carrier B is identified in the *FCC Long Distance Market Share Report*. Prior to calculating Carrier B's refund, SBC would remove all presubscribed lines of carriers issued a refund under Method One from the total FCC reported presubscribed lines for 1994 to determine the remaining pool of presubscribed lines. SBC would then determine Carrier B's market share by dividing its presubscribed lines by the remaining pool of presubscribed telephone lines for 1994. Assume Carrier B's market share based on that calculation is 10%. Carrier B would receive a refund of 10% of the remaining $500,000, or $50,000.

[15] Consider the following example. At the end of the 30-day filing period, 10 carriers have filed a claim, each demonstrating that they operated as an IXC in the Ameritech Region in 1993. These carriers were not expressly identified in the *FCC Long Distance Report* because they had less than .05% of the nation's presubscribed telephone lines in 1993, and thus are non qualifying carriers. SBC will calculate their collective market share using the presubscribed lines reported for non qualifying carriers divided by the Adjusted Reported Lines. Assume that based on that calculation, the 10 carriers collectively had 2% market share. They would be entitled to 2% of Ameritech's remaining refund liability, which would be divided equally amongst the 10 carriers.

the appropriate refund amount. Where bankruptcy laws permit, SBC will offset its refund liability for each of these carriers against any liabilities owed to the relevant SBC LEC. If SBC determines that a refund is still owed, SBC will issue these carriers refunds as credits to their bill (existing customers) or forward a check (former customers) within 90 days of approval of SBC's refund plan, where bankruptcy proceedings are not invoked or underway, or within 30 days of conclusion of any bankruptcy proceedings.

## IV. CONCLUSION

SBC requests that the Commission approve its recalculations and plan for refund as set forth herein.

Respectfully Submitted,

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